

Testimony of Mark Baker, representing U.S. Smokeless Tobacco Co. in opposition to HB 654

Mr. Chairman, members of the committee, for the record my name is Mark Baker. I am an attorney with the Helena firm of Anderson & Baker and am here today on behalf of U.S. Smokeless Tobacco Company in opposition to HB 654.

Mr. Chairman, I have tremendous respect for the sponsor of the legislation now before you. In fact, while growing up together in Polson, we were actually on the same side of the field, on behalf of Polson High's football team. That is why it is particularly difficult to rise today in opposition to his legislation.

Indeed, Representative McAlpin has identified an important issue, preventing youth access to tobacco. In fact, the company that I represent, U.S. Smokeless Tobacco (USSTC), shares his concern for it does my company absolutely no good to see an increase in youth usage. However, we strongly disagree with his approach to addressing the issue.

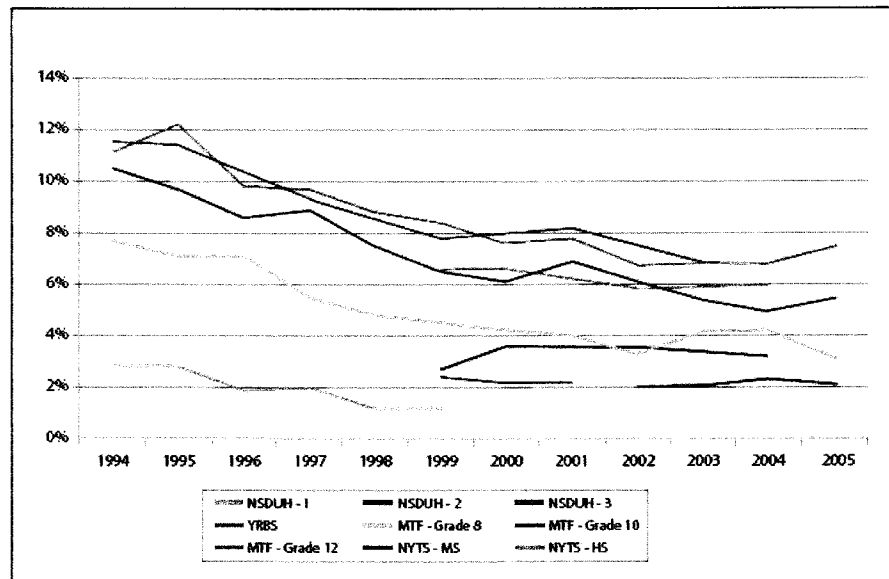
As we have reviewed the bill, we believe its fundamental effect would be to prohibit virtually all tobacco products in the state of Montana, including USSTC's signature brands, Copenhagen and Skoal. As you have heard or will hear, most tobacco products have flavoring additives included in the manufacturing process. Copenhagen and Skoal are no exception and would potentially be outlawed under the legislation now before you.

Flavored smokeless tobacco products date back almost 200 years, to the 1820's, when tobacco leaves were soaked in licorice and sugar syrup, air dried, sprinkled with rum, sweet oils and spices and twisted or molded into chewing plugs. George Weyman, the founder of the present day company, first opened his tobacco shop in Pittsburgh, PA in 1822. Seventy three years ago, in 1934, USSTC introduced Skoal, a wintergreen flavored smokeless tobacco.

Throughout that time and continuing to this day, adult consumers have been enjoying flavored smokeless tobacco products. Skoal is now available in a variety of additional flavors, including Mint, Cherry, Spearmint, Berry, Vanilla Blend, Apple Blend, Peach Blend and Citrus Blend. Why? Because adult consumers enjoy and demand such products, much like they do the flavorings used in alcoholic beverages and many other products.

In addition, if you look at the youth usage rates of smokeless tobacco from studies conducted by the U.S. Department of Health and Human Services, the Centers for Disease Control and the American Legacy Foundation, there has been a significant and sustained downward trend in the last 10 years.

Past 30-day Youth Usage of Smokeless Tobacco Among Males and Females According to Various National Studies



Laws that are already in effect are working. In addition, the master settlement agreements are working as well.

An important point to make is that there is a separate Smokeless Tobacco Master Settlement Agreement (STMSA). My company, U.S. Smokeless Tobacco Company, is currently the only signatory to that agreement. That agreement is approximately 50 pages long and encompasses many of the issues contained in HB 654.

First, and foremost the STMSA bars USSTC from taking actions that, directly or indirectly, “target” youth in their advertising, marketing and promotional activities, and from taking any action the primary purpose of which is to initiate, maintain or increase the incidence of use of tobacco products by youth; it bars the use of “cartoon” characters; it bars branded outdoor advertising; it bars certain types of brand name sponsorship (i.e., the Skoal “Bandit”); it bars distribution of free samples except in adult-only facilities and in conjunction with an adult purchase; and it identifies eight types of state and local legislative or administrative proposals intended by their terms to reduce youth access to and the incidence of youth consumption of tobacco products that signatory companies may not oppose or caused to be opposed in the settling states (of which Montana is one).

As such, USSTC has proactively and voluntarily taken steps to address these issues and is bound by the Smokeless Tobacco Master Settlement Agreement it has executed with the

states and the states may legally enforce the provisions of the STMSA. I have suggested to the sponsor that perhaps an alternative approach to addressing his concerns might be to identify those issues raised by the non-participating manufacturers of smokeless tobacco who currently do not have to comply with the obligations of the STMSA.

In sum, HB 654, while worthy in its purpose, is a proposed solution that goes far beyond addressing youth access and would ban virtually all tobacco products in the state of Montana enjoyed by legal adult consumers. Current law and the existing Master Settlement Agreements have resulted in significant reductions in youth usage over the last 10 years. A more narrowly tailored approach, such as addressing the issue of non-participating manufacturers, would better address the stated objectives without infringing on the rights of adult consumers to enjoy tobacco products. We would respectfully request that the committee table HB 654.

Respectfully submitted,

Mark Baker, on behalf of U.S. Smokeless Tobacco Co.
Anderson & Baker
Power Block Building, 4th Floor
7 West 6th Avenue
P.O. Box 866
Helena, MT 59624
406.449.3118 – Office
406.449.0667 – Fax
mbaker30@bresnan.net